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PSD2: RTS on central contact points published in Official Journal

Commission Delegated Regulation (EU) 2020/1423 setting out regulatory technical standards (RTS) on the criteria for appointing central contact points and the functions of those central contact points under the revised Payment Services Directive (PSD2) has been published in the Official Journal.

The Regulation enters into force on 29 October 2020.

Coronavirus: EU Commission extends State aid Temporary Framework

The EU Commission has decided to prolong and extend the scope of the State aid Temporary Framework adopted on 19 March 2020 to support the economy in the context of the COVID-19 outbreak. All sections of the Temporary Framework are prolonged for six months until 30 June 2021, and the section to enable recapitalisation support is prolonged for three months until 30 September 2021.

The objective is to enable Member States to support businesses in the context of the COVID-19 crisis, especially where the need or ability to use the Temporary Framework has not fully materialised so far, while protecting the level playing field. Before 30 June 2021, the Commission will review and examine the need to further prolong or adapt the Temporary Framework.

The amendments also introduce:

- support for uncovered fixed costs of companies;
- exit of the State from previously State-owned companies; and
- an extension of the temporary removal of all countries from the list of 'marketable risk' countries under the Short-term export-credit insurance Communication.

PSD2: EBA consults on revised major incident reporting guidelines

The European Banking Authority (EBA) has launched a consultation on its proposals to revise the guidelines on major incident reporting under PSD2. The proposals are intended to:

- optimise and simplify the reporting process;
- capture additional relevant security incidents;
- reduce the number of operational incidents that will be reported; and
- improve the meaningfulness of the incident reports received.

The EBA has proposed the introduction of the new incident classification criterion 'breach of security measures' to capture security incidents where the breach of the security measures of the payment services provider (PSP) has an impact on the availability, integrity, confidentiality and/or authenticity of the payment services related data, processes and/or systems. It also proposes changes to the thresholds for the calculation of the criteria 'transactions affected' and 'payment service users affected'.

With the aim of improving the quality of the reports collected, the EBA has suggested the use of a standardised file for reporting major incident reports, streamlining the reporting template, and adding further granularity to the reported causes of incidents and aligning those to other incident reporting frameworks in the EU.

As part of the changes introduced to reduce the reporting burden to PSPs, the EBA has proposed to remove the regular updates on the intermediate report and to extend the deadline for submission of the final report.

Comments are due by 14 December 2020.

CRR: EBA publishes final draft RTS on prudential treatment of software assets

The EBA has published its final draft RTS on the prudential treatment of software assets under Article 36 of the Capital Requirements Regulation (CRR), amending the existing RTS on own funds requirements for institutions.

The final draft RTS specify the methodology institutions should adopt for the purpose of the prudential treatment of software assets under the CRR as amended by the risk reduction measures (RRM) package.

Following feedback to the EBA's June 2020 consultation:

- the calibration of the maximum prudential amortisation period of software has been extended to three years;

- to facilitate the implementation of the new prudential treatment of software, the prudential amortisation has been revised to be calculated from the date on which the software asset is available for use; and
- the date of entry into force has been changed to the day following that of publication in the Official Journal.

The final draft RTS have been sent to the EU Commission for adoption.

ECB consults on issuance and design of digital euro

The European Central Bank (ECB) has launched a public consultation on the issuance and design of a central bank digital currency (CBDC), the 'digital euro'. The survey seeks views from the public and any interested stakeholders on the benefits and challenges of issuing a digital euro and on its possible design. It is divided into two parts, the first aimed at the general public, and the second targeted primarily at experts from the financial industry, technology companies and academia. Among other things, the ECB is seeking views on:

- how people in the euro area would use a digital euro and the ways in which it could complement the existing payment methods;
- how to ensure its design would not inadvertently constrain other industry-led initiatives aimed at providing additional features or services for the benefit of citizens; and
- what role the financial industry, technology companies or academics could play in facilitating or encouraging the use of a digital euro as an effective complement to cash.

Capital Markets Union: EU Parliament adopts non-binding resolution calling for simplified rules

The EU Parliament has adopted a non-binding resolution on improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation as part of the Capital Markets Union (CMU) project.

The resolution calls on the EU Commission to draft new legislative measures on European secured notes (ESNs) as a new dual-recourse funding instrument for banks and for a European single access point for financial and non-financial information in respect of listed and unlisted EU companies.

The resolution stresses particularly that the CMU should be consistent with the European Green Deal, in particular with the Sustainable Europe Investment Plan and the EU taxonomy for sustainable activities, with the CMU aiming to direct investment towards environmentally friendly and competitive projects that contribute to the EU's sustainable agenda.

EU Parliament adopts non-binding resolution on digital finance framework

The EU Parliament has adopted a non-binding resolution setting out its recommendations to the EU Commission on a digital finance framework to address issues around cryptoassets, cyber resilience, data sharing and customer safety. In their recommendation, MEPs:

- welcome the Commission's intention to finalise a fintech action plan by the end of Q3 2020 and emphasise that any EU-level measures should be proportional, technologically neutral and risk-based, and should effectively protect consumers and investors;

- call for a comprehensive pan-European open-ended taxonomy for new cryptoasset products and a common framework for monitoring and supervision;
- propose the appointment of a single European supervisor, responsible for overseeing cryptoasset activity;
- emphasise the unique qualities of stablecoins and call for the legislative framework to, among other things, facilitate a stable conversion rate between stablecoins and fiat currencies;
- identify regulatory gaps in existing EU legislation that should be addressed to combat money laundering risks;
- call for legislative changes to be made in the area of ICT and to the current cybersecurity requirements for the EU financial sector with a focus on modernisation, compliance with international standards and operational resilience testing;
- emphasise the need to monitor and govern cross-border data flows, including to and from third countries; and
- emphasise the importance of digital finance in the development of financial markets and the Capital Markets Union, and its potential for increasing financing and investment opportunities and closing the SME financing gap.

BIS and central banks report on key requirements for central bank digital currencies

The Bank for International Settlements (BIS), in collaboration with the ECB, the Board of Governors of the US Federal Reserve and the central banks of Canada, Japan, Sweden, Switzerland and England, has published a report setting out common foundational principles and key requirements for a CBDC and its supporting infrastructure.

The report identifies the following foundational principles:

- a central bank should not compromise monetary or financial stability by issuing a CBDC;
- a CBDC must coexist with and complement existing forms of money; and
- a CBDC should promote innovation and efficiency.

In addition, central banks should be certain that they can safeguard against the potential adverse impact of CBDCs (including the destabilisation of runs into central bank money) and fully understand the potential market structure effects of CBDCs before considering a launch.

Key features of any future CBDC system should include:

- being sufficiently resilient and secure to maintain operational integrity;
- being convenient and available at a very low or no cost to end users;
- being underpinned by appropriate standards and a clear legal framework;
- having an appropriate role for the private sector; and
- promoting competition and innovation.

FSB publishes recommendations for regulation, supervision and oversight of global stablecoin arrangements

The Financial Stability Board (FSB) has published a report setting out its high-level recommendations for the regulation, supervision and oversight of global stablecoin (GSC) arrangements. The FSB notes that stablecoins have the potential to enhance the efficiency of the provision of financial services and to promote financial inclusion. However, it also warns that if they are widely adopted, stablecoins could become systemically important in and across one or many jurisdictions and may challenge the comprehensiveness and effectiveness of existing regulatory and supervisory oversight.

To address these risks, the FSB recommends that authorities:

- have the necessary powers, tools and resources to comprehensively regulate, supervise and oversee GSC arrangements and their associated functions and activities, and to enforce relevant laws and regulations effectively;
- apply requirements and international standards to GSC arrangements on a functional basis and proportionately to their risks; and
- cooperate and coordinate with each other, both domestically and internationally, to ensure comprehensive regulation, supervision, and oversight of GSC arrangements across borders and sectors.

It also recommends that GSC arrangements:

- have comprehensive governance frameworks with a clear allocation of accountability for the functions and activities within them;
- have effective risk management frameworks in place especially with regard to reserve management, operational resilience, cybersecurity safeguards and anti-money laundering/counter terrorist financing measures;
- have in place robust systems for collecting, storing and safeguarding data;
- have appropriate recovery and resolution plans;
- provide users and relevant stakeholders with comprehensive and transparent information necessary to understand the functioning of the arrangement;
- provide legal clarity to users on the nature and enforceability of any redemption rights and the process for redemption, where applicable; and
- meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction, and adapt to new regulatory requirements as necessary.

FSB publishes global transition roadmap for LIBOR

The FSB has published a global transition roadmap for LIBOR, setting out a timetable of actions for financial and non-financial sector firms with the aim of ensuring a smooth LIBOR transition by end-2021.

The roadmap is intended to inform those with exposure to LIBOR benchmarks of some of the steps they could be taking now and over the remaining period to end-2021 to successfully mitigate these risks. The FSB considers these as prudent steps to take to ensure an orderly transition by end-2021, and they are intended to supplement existing timelines and milestones from industry working groups and regulators.

The steps in the roadmap include:

- agreeing on a project plan to transition in advance of end-2021, having already identified and assessed all existing LIBOR exposures;
- adhering to the ISDA Fallbacks Protocol by its effective date;
- offering non-LIBOR linked loans to customers by the end of 2020;
- establishing formalised plans to amend legacy contracts where this can be done and implementing the necessary system and process changes to enable transition to robust alternative rates by mid-2021; and
- being prepared for LIBOR to cease by end-2021.

FSB publishes stage 3 roadmap for enhancing cross-border payments

The FSB has published a stage 3 roadmap to enhance cross-border payments.

Building on the stage 1 and stage 2 reports previously published by the FSB in April 2020 and the Committee on Payments and Market Infrastructures (CPMI) in July 2020 respectively, the roadmap provides a high-level plan setting out actions and indicative timelines in the following focus areas:

- public and private sector commitments, such as developing a common cross-border payments vision and targets, implementing international guidance and principles, and defining common features of cross-border service levels;
- coordinating and aligning regulatory, supervisory and oversight frameworks, including applying AML/CFT rules consistently and comprehensively, reviewing the interaction between data frameworks and cross-border payments, promoting safe payment corridors, and fostering Know Your Customer (KYC) and identity information sharing;
- improving existing payment infrastructures and arrangements, including facilitating increased adoption of payment versus payment (PvP), improving (direct) access to payment systems, exploring reciprocal liquidity arrangements, extending and aligning operating hours, and pursuing interlinking of payment systems for cross-border payments;
- enhancing data and market practices, including adopting a harmonised ISO 20022 version for message formats, harmonising application programming interfaces (API) protocols for data exchange, and establishing unique identifiers with proxy registries; and
- exploring new payment infrastructures and arrangements, including the feasibility of new multilateral platforms and arrangements for cross-border payments, fostering the soundness of global stablecoin arrangements, and factoring an international dimension into CBDC design.

FSB publishes update on work in financial innovation, payments systems, cyber resilience and market fragmentation

The FSB Chair, Randal K. Quarles, has written to the G20 Finance Ministers and Central Bank Governors on the work the FSB is doing in the areas of financial innovation, payments systems, cyber resilience and market fragmentation.

The FSB's key outputs from its work on financial innovation and technology include:

- a toolkit of effective practices for cyber incident response and recovery;
- an examination of the impact that Big Tech firms have on emerging market and developing economies;
- an assessment of how suptech and regtech technologies may improve authorities' supervisory capabilities and institutions' regulatory compliance; and
- a set of high-level recommendations for the regulation, supervision and oversight of global stablecoin arrangements.

In addition to the letter, the FSB has also published a report on its work to address market fragmentation. In particular, the report sets out the specific activities that have been completed to address the four areas of focus identified in the FSB's June 2019 report, namely:

- deference;
- the pre-positioning of capital and liquidity;
- regulatory and supervisory coordination and information sharing; and
- evaluation of the too-big-to-fail reforms.

ISDA publishes statement on upcoming launch of IBOR Fallbacks Supplement and Protocol

The International Swaps and Derivatives Association (ISDA) has published a statement from its Board of Directors on the forthcoming launch of the IBOR Fallbacks Supplement and IBOR Fallbacks Protocol.

ISDA has announced that it will launch the IBOR Fallbacks Supplement to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol on 23 October 2020. The supplement and the amendments made by the protocol will take effect on 25 January 2021. On this date, all new derivatives contracts that incorporate the 2006 ISDA Definitions and reference one of the covered IBORs will contain the new fallbacks. Derivatives contracts existing as of this date will incorporate the new fallbacks if both counterparties have adhered to the protocol or otherwise bilaterally agreed to include the new fallbacks in their contracts. The protocol will remain open for adherence after this effective date.

This follows the publication of a positive business review letter from the US Department of Justice (DoJ) stating that it has no current intention to challenge ISDA's proposal to amend its standard documentation. ISDA has indicated that it has kept other competition authorities informed and does not anticipate adverse action by these authorities with respect to its implementation of new fallbacks in ISDA's standard documentation for derivatives.

The FSB has also published a statement encouraging broad and timely adherence to the ISDA IBOR Fallbacks Protocol.

Brexit: HM Treasury publishes consultation outcome and draft SI on CRD5 and transposition update on financial services SIs

HM Treasury (HMT) has published its response to its consultation on updating the UK's prudential regime before the end of the transition period on 31 December 2020 in relation to the implementation of the fifth Capital Requirements Directive (CRD5).

The UK Government broadly intends to legislate in a way that is consistent with the intent expressed in the original consultation, including:

- exempting investment institutions prudentially regulated by the Financial Conduct Authority (FCA) from the scope of CRD5;
- various updates to capital buffers, including granting the Prudential Regulation Authority (PRA) and Financial Policy Committee (FPC) powers in relation to an Other Systemically Important Institutions (O-SII) buffer and the CRD5 systemic risk buffer (SRB);
- extending the PRA's powers for consolidated supervision to holding companies and creating a new approval regime for Financial Holding Companies (FHCs) and Mixed Financial Holding Companies (MFHCs). In addition, granting the PRA an express power to remove members of the management body of institutions and holding companies; and
- the continued exemption of credit unions under CRD5.

A draft SI setting out the changes has been laid in the UK Parliament.

HMT has also published a statement providing an update on its programme for laying statutory instruments (SIs) relating to financial services under the EU (Withdrawal) Act 2018 as amended by the EU (Withdrawal Agreement) Act 2020.

Among other things, HMT intends to bring forward further secondary legislation to:

- update references to 'exit day' and other dates within substantive provisions to 'IP completion day' to ensure they operate as intended from the end of the transition period on 31 December 2020; and
- amend the application of the Temporary Transition Power (TTP) so that it is available for use by the UK regulators for a period of two years from the end of the transition period.

Brexit: draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations laid before Parliament

HM Government has laid the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations before Parliament.

The draft SI is intended to ensure that there is a coherent and functioning financial services regulatory regime in the UK at the end of the transition period (TP). It amends recently applicable retained EU legislation, including the Securities Financing Transaction Regulation (SFTR) and the Securitisation Regulation, as well as related UK domestic and retained EU legislation. The SI also makes clarifications and a correction to earlier financial services EU Exit instruments and provides supervisory powers for the financial services regulators in order for them to supervise firms effectively at the end of the TP.

Amendments to be made by the draft SI also affect legislation regarding the following topics, among others:

- the EU Benchmarks Regulation (BMR);
- central counterparties;
- capital requirements;
- credit rating agencies;
- cross-border payments;
- the EU Deposit Guarantee Schemes Directive;
- equivalence determinations;
- the EU Emissions Trading Scheme (ETS);
- financial regulators' powers;
- the Financial Services and Markets Act (FSMA) 2000 (Regulated Activities) Order 2001 and further FSMA-related secondary legislation;
- MiFID;
- over-the-counter (OTC) derivatives;
- packaged retail and insurance-based investment products (PRIIPs);
- the EU Prospectus Regulation;
- the EU Solvency II Directive; and
- trade repositories.

Brexit: MoJ publishes consultation response and draft SI on departure from retained EU case law

The Ministry of Justice (MoJ) has published its consultation response and a draft SI on the power to depart from retained EU case law by UK courts and tribunals after the end of the transition period on 31 December 2020.

The UK Government has decided to extend the power granted to the UK Supreme Court and the High Court of Justiciary in Scotland under the EU (Withdrawal) Act 2018 to the Court of Appeal of England and Wales and the following equivalent courts:

- The Court Martial Appeal Court;
- The Court of Appeal of Northern Ireland;
- The High Court of Justiciary in Scotland when sitting as a court of appeal in relation to a compatibility or a devolution issue;
- The Inner House of the Court of Session in Scotland;

- The Lands Valuation Appeal Court in Scotland; and
- The Registration Appeal Court in Scotland.

These courts must apply the same test as used by the UK Supreme Court in deciding whether to depart from its own case law, namely whether it appears right to do so.

The Government does not intend to make any changes to the existing rules of precedent.

The draft SI setting out the changes has been laid in the UK Parliament.

PRA issues policy statement on counterparty credit risk

The PRA has published a policy statement providing feedback to responses to its consultation on the treatment of model limitations in banks' internal models. The PRA has also published its final policy in its updated supervisory statement (SS) 12/13 on counterparty credit risk.

The PRA received three responses to the consultation, which were broadly supportive of the principle of a centralised inventory for monitoring model limitations and assumptions and were broadly opposed to the principle of a floor for over-collateralised exposures.

The policy statement is relevant to UK banks, building societies and PRA-designated UK investment firms that are subject to the CRR. It is not relevant to UK branches of firms in other European Economic Area (EEA) countries and non-EEA countries, nor to insurance firms. The PRA has assessed that the proposals set out will not be affected in the event that the UK leaves the EU with no implementation period in place.

PRA proposes overseas IRB credit risk models approach

The PRA has published a consultation paper on its proposed approach in respect of firms' use of overseas internal ratings based (IRB) credit risk models built to non-UK regulatory requirements, in the calculation of UK group consolidated capital requirements.

The PRA currently permits the solo capital requirements generated by non-EEA IRB models (developed to meet non-EEA IRB requirements) to be included in the firms' UK group consolidated capital requirements. The overseas models may not be fully compliant with all relevant UK IRB requirements as they are designed to comply with non-UK IRB requirements, although the PRA's criteria seek to ensure a prudent approach.

For overseas IRB models built to non-UK requirements that are not currently used for UK consolidated capital requirements, the proposed implementation date for the changes resulting from the consultation is 1 July 2021. Existing overseas IRB models built to non-UK requirements used for UK consolidated capital requirements that meet the proposed criteria can continue to be used for UK consolidated capital requirements. Existing overseas models which do not meet the criteria for use of the revised approach from 1 July 2021 may need to be remediated in order to meet UK IRB requirements and the PRA expects this to be done by 1 January 2023 in line with the planned implementation of Basel 3.1.

Comments are due by 12 January 2021.

PRA writes Dear CEO letter on operational readiness for a zero or negative Bank Rate

The PRA has published a letter to chief executive officers (CEOs) requesting information about firms' operational readiness to implement a zero or negative Bank Rate.

The letter has been sent to specific firms to seek information regarding challenges with potential implementation, particularly in terms of technology capabilities.

The Bank of England (BoE) and the PRA are commencing structured engagement on the operational considerations of a zero or negative policy rate. The PRA notes that this structured engagement is not indicative that the Monetary Policy Committee (MPC) will employ a zero or negative policy rate.

Responses are due by 12 November 2020.

CSSF issues circular regarding survey of amount of covered deposits held as of 30 September 2020

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued CSSF-CPDI Circular 20/23 dated 6 October 2020 regarding the survey of the amount of covered deposits held as of 30 September 2020.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL), (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions) and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 30 October 2020 at the latest.

In order to transmit the data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF website. The file containing the data must be duly completed and submitted regardless of the circumstances in which the entity may find itself. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted through secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

CSSF issues communiqué on notification of use of limited network exclusion under Payment Services Law

The CSSF has issued a communiqué on the obligation to notify the CSSF of the use of the limited network exclusion under the law of 10 November 2009 on payment services, as amended (Payment Services Law).

The CSSF notes that anyone who provides payment services in Luxembourg needs to be authorised or registered. However, where certain conditions are fulfilled, some activities are excluded from authorisation or registration but may be subject to notification requirements. Service providers (e.g. gas stations) that propose payment instruments (e.g. debit cards) or any other personalised device(s) and/or set of procedures agreed with the client that can only be used in a limited way may be excluded by the 'limited network exclusion' if certain conditions are met.

Payment instruments are considered to be used in a limited way if they constitute:

- instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer; or
- instruments which can be used only to acquire a very limited range of goods or services.

Service providers are legally obliged to notify the CSSF of these specific payment instruments if the total value of the payment transactions executed through such payment instruments or made with monetary value issued in any period of 12 months exceeds EUR 1 million.

CSSF issues regulation on countercyclical buffer rate for Q4 2020

The CSSF has issued a regulation (20-06) on the setting of the countercyclical buffer rate for the fourth quarter of 2020. The regulation was published in the Luxembourg official journal (Mémorial A) on 5 October 2020. The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 7 September 2020 (CRS/2020/003) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the fourth quarter of 2020. The new rate will apply as of 1 January 2021.

The regulation entered into force on 5 October 2020.

Coronavirus: CSSF updates FAQs with regard to prudential treatment of payment moratoria

The CSSF has updated its COVID-19 FAQs to address the consequences of the phasing out of the EBA eligible payment moratoria.

The CSSF notes that the EBA has decided not to extend the deadline for the application of general payment moratoria compliant with the EBA guidelines EBA/GL/2020/02 (as amended by EBA/GL/2020/08), and therefore, any moratorium applied after the 30 September 2020 is not an EBA-compliant general payment moratorium.

Amongst other things, the CSSF has further clarified that:

- institutions may continue to offer moratoria in response to the COVID-19 pandemic also after 30 September 2020. However following this date, the general forbearance framework applies and therefore all exposures benefiting from a moratorium related to the COVID-19 pandemic newly applied after the 30 September 2020 will have to be classified into forborne;
- exposures that benefitted from an EBA-compliant general payment moratorium before the 30 September 2020 continue to benefit from the exemption of classifying the exposure into forborne until the end of the maximum grace period (i.e. predefined limited period of time) as agreed in the moratorium;
- if an EBA-compliant moratoria with a maximum grace period ended before 30 September 2020, the institutions may offer moratoria that would lead to a duration longer than the maximum grace period. However such an extension would not be EBA compliant and the general provisions on forbearance and default identification would apply; and
- institutions should continue to assess other unlikeliness-to-pay criteria of obligors subject to the moratorium on their exposures following their normal policies, while possibly prioritising the assessment of obligors who are most likely to experience payment difficulties in a risk-based manner.

Polish Financial Supervision Authority adopts Recommendation Z on corporate governance in banks

The Polish Financial Supervision Authority has adopted Recommendation Z on corporate governance in banks. The recommendation is a set of good practices within the scope of corporate governance. Corporate governance includes, in particular: bank management systems, bank organisation, rules of operation, powers, obligations and responsibility as well as mutual relations between the supervisory board, management board and key persons of a bank.

The deadline for banks to comply with Recommendation Z is 1 January 2022.

Australian regulators urge institutions to adhere to ISDA IBOR Fallbacks Protocol and Supplement

In order to encourage the orderly transition of London Interbank Offered Rate (LIBOR) referenced derivatives contracts, the Australian Securities and Investments Commission (ASIC), with the support of the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA), has strongly directed all financial and corporate institutions that use derivatives contracts referencing LIBOR to review and adhere to the IBOR Fallbacks Protocol and the associated Supplement to the 2006 ISDA Definitions.

The Protocol and associated Supplement, which will be launched by ISDA on 23 October 2020, are intended to implement robust fall-back provisions for derivative contracts referencing key IBORs, including LIBOR. The regulators have emphasised that adherence to the Protocol by its effective date of 25 January 2021 is critical to the mitigation of both individual entity risks and systemic risks associated with the discontinuation of LIBOR.

ASX consults on proposed changes to risk based capital requirements for ASX Clear participants

The Australian Securities Exchange (ASX) has launched a public consultation on proposed changes to the risk based capital requirements by consolidating the two capital measures (i.e. core and liquid capital) that non-bank ASX Clear participants are currently required to maintain under the ASX Clear Operating Rules into a single capital measure i.e. an adjusted liquid capital.

The proposed single capital measure, which will replace the existing two capital measure approach, is intended to increase the quality of capital held by a participant by seeking to ensure that its capital is held in high quality liquid assets that are readily available. Under the proposal:

- there will be a limit on the amount of approved subordinated debt that can be included for liquid capital purposes, with certain exceptions subject to ASX approval; and
- the minimum amount of capital that a participant would be required to maintain (liquid capital requirement) would be the higher of the participant's core requirement (currently termed 'minimum core capital requirement') and its total risk requirement (TRR).

Moreover, under the current rules, participants have separate core and liquid capital notification obligations. The ASX is now proposing that there will only be a single notification obligation. Under this proposal, participants will be required to notify ASX Clear when the ratio of liquid capital to liquid capital requirement falls to or below 1.2 (irrespective of whether the liquid capital requirement is the core requirement or TRR).

Certain miscellaneous amendments to the current rules have also been proposed, mainly to ensure the currency and accuracy of references.

The ASX intends to publish the proposed rule amendments in the second quarter of 2021, subject to regulatory clearance, with the new requirements taking effect six months after the publication of the proposed rule amendments.

Comments on the consultation are due by 30 November 2020.

MAS and financial industry extend support for individuals and SMEs who need more time to resume loan repayments

The Monetary Authority of Singapore (MAS), together with the Association of Banks in Singapore and the Finance Houses Association of Singapore, has announced an extension of the support measures to help individuals and small and medium-sized enterprises (SMEs) facing cashflow difficulties transition gradually to full loan repayments. The support measures will also be available to borrowers previously not under any payment deferral, but who are now facing cashflow challenges.

In particular, the extended measure are intended to:

- help individuals with loan commitments by reducing instalment plans for property loans, extending loan tenure for renovation and student loans, as well as extending assistance for personal unsecured credit and debt consolidation plans; and

- help SMEs with loan commitments and restructuring options through partially deferring principal payments of loans under the Extended Support Scheme - Standardised (ESS-S), and through customised restructuring programmes for SME borrowers for whom the ESS-S is not suitable. The customised scheme will be known as the Extended Support Scheme - Customised (ESS-C).

The MAS has indicated that these extended measures will progressively expire over 2021.

Insolvency, Restructuring and Dissolution (Amendment) Bill moved for first reading in Singapore Parliament

The Insolvency, Restructuring and Dissolution (Amendment) Bill has been moved for its first reading in the Singapore Parliament. The Bill establishes a Simplified Insolvency Programme (SIP), which is intended to provide simpler, faster, and lower-cost proceedings for eligible micro and small companies (MSCs) for the purpose of restructuring their debts or winding up the company in an orderly manner. MSCs refers to companies with an annual revenue of less than SGD 1 million and SGD 10 million respectively.

The SIP offers assistance through two temporary and new processes adapted and modified from the existing framework under the Insolvency, Restructuring and Dissolution Act 2018 (IRDA), which provide for temporary measures in the form of a simplified debt restructuring procedure and a simplified winding up procedure.

For the simplified debt restructuring procedure, the key features include requiring only one application to the High Court, having the restriction on ipso facto clauses and moratorium against creditors' action automatically in place while the company is in simplified debt restructuring, and lowering the creditor approval threshold to two-thirds in value.

For the simplified winding up procedure, the key features include adapting the existing creditors' voluntary winding up process in the IRDA, allowing the company to be dissolved without the need to take further steps for the administration of the winding up (such as further realisation of assets and distribution of dividends) where the liquidator views the assets of the company insufficient to meet the expenses of winding up, and its affairs do not require further investigation, and reducing the scope of the liquidator's functions.

The Bill provides that the eligibility criterion for MSCs to qualify for the SIP involves, amongst other things, limits on the aggregate total liabilities of the company, the number of creditors and employees, and the amount and value of realisable assets during winding up.

The SIP will be available for a period of 6 months from the date of commencement of the proposed legislation, and subject to extension at the discretion of the Minister of Law. The programme will be administered by the Official Receiver, who may assign private insolvency practitioners to administer the cases accepted into simplified debt restructuring and simplified winding up. There will also be a co-payment component for applicant companies under the programme.

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RECENT CLIFFORD CHANCE BRIEFINGS

EU Foreign Investment Screening Regulation takes effect – a high-level review of regimes across Europe

Since the EU Foreign Direct Investment (FDI) Screening Regulation entered into force in April 2019, there has been an increasing trend by Member States towards reforming foreign (direct) investment to shield strategic industries and businesses from opportunistic acquisitions by 'foreign' investors. Whilst the COVID-19 pandemic has intensified consideration of this issue, there was a move by national governments to tighten foreign investment controls prior to the global outbreak.

Member States were required to implement the cooperation mechanism established under the FDI Regulation by 11 October 2020. The FDI Regulation does not create a new FDI regime, but seeks to regulate the screening of FDI transactions across the EU.

This briefing discusses the FDI Regulation which also provides a high-level review of regimes across Europe.

https://www.cliffordchance.com/briefings/2020/10/eu-foreign-investment-screening-regulation-takes-effect--a-high-.html

New approach to Article 22 EUMR – a back door to close the 'enforcement gap'?

On 11 September 2020, Competition Commissioner Margrethe Vestager announced that, from mid-2021, the European Commission will begin accepting requests for referral by national competition authorities of Member States in relation to transactions which may significantly affect competition, irrespective of whether those transactions meet the national merger control thresholds of the NCA making the request. This is a significant shift in policy, with potentially far-reaching consequences.

This briefing discusses the Commission's new approach.

https://www.cliffordchance.com/briefings/2020/10/new-approach-to-article-22-eumr--a-back-door-to-close-to--enforc.html

ESG in Asian investment management – why the fuss?

ESG is making the headlines, one way or another, on a daily basis. Compared with Europe, Asia has generally experienced relatively low and inconsistent regulatory intervention on ESG issues leading to a misconception that ESG may be of little relevance for managers operating in Asia. Nevertheless, there are many practical and compelling reasons why Asia-based managers should ignore ESG at their peril.

This briefing discusses the key issues.

https://www.cliffordchance.com/briefings/2020/10/esg-in-asian-investment-management--why-the-fuss-.html

ISDA IBOR Fallbacks Supplement and Protocol – key considerations

ISDA's IBOR Fallbacks Supplement and Protocol have been finalised and will be released on 23 October 2020. The Supplement, when it becomes effective on 25 January 2021, will implement risk-free rate fallbacks into the terms of new transactions and the Protocol will enable adhering parties to implement these fallbacks into the terms of legacy transactions. The broad scope of the amendments made by the Protocol, the range of agreements it covers and the availability of a series of templates and amendment agreements which can be used to tailor the terms of adherence, confront parties contemplating adherence with a series of major challenges.

This briefing discusses the Supplement and Protocol.

https://www.cliffordchance.com/briefings/2020/09/isda-benchmark-fallbacks-supplement-and-protocol--key-issues-and.html

Brexit, law and jurisdiction – where will we be after transition?

True Brexit is nearly upon us, with the end of the transition period on 31 December 2020. What will this mean for the law and jurisdiction clauses in international contracts entered into after that date?

In most cases, no fundamental change will be required, but the UK's accession to the Hague Convention on Choice of Court Agreements may make exclusive jurisdiction provisions more attractive for some parties.

This briefing discusses the impact of Brexit on choice of law and jurisdiction clauses in international contracts.

https://www.cliffordchance.com/briefings/2020/10/brexit--law-and-jurisdiction--where-will-we-be-after-transition-.html

British insurers in Spain face the realities of a hard Brexit

The transition period set out in the withdrawal agreement signed by the UK and the EU is set to expire on 31 December 2020. If the transition period ends with no new agreement or only a trade deal, it would lead in effect to a hard Brexit: a muddled disentangling of the UK from the EU's legal framework with numerous consequences for British insurers operating in Spain.

This briefing discusses these consequences.

https://www.cliffordchance.com/briefings/2020/10/british-insurers-in-spain-face-the-realities-of-a-hard-brexit-.html

Amending the way export licenses will be granted (or not)

The US Department of Commerce, Bureau of Industry and Security issued a final rule 'Amendment to Licensing Policy for Items Controlled for Crime Control Reasons' amending the US Export Administration Regulations that impacts how BIS could consider human rights concerns when making licensing decisions. Certain BIS licensing decisions are now to be based, in part, on 'US Government assessments of whether items may be used to engage in, or enable violations or abuses of, human rights.' The change gives BIS a new ground on which to deny a license application and will apply to a broad range of goods.

This briefing discusses the final rule.

https://www.cliffordchance.com/briefings/2020/10/Amending-the-way-export-licenses-will-be-granted-or-not.html

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